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No. 07-171

FILED
OCT 11 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The
SUPREME COURT OF THE UNITED STATES

IN RE A PURPORTED LIEN OR CLAIM AGAINST COLLIN COUNTY CLERK BRENDA TAYLOR

(originally submitted as Florance v. Taylor)

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS
FIFTH DISTRICT OF TEXAS AT DALLAS

RULE 44.2 PETITION FOR REHEARING
SUB NOMINE

RICHARD JOHN FLORANCE, JR.
1908 VASSAR DRIVE
RICHARDSON, TEXAS, 75081

Rule 44.2 Petition for Rehearing Sub Nomine

RJF petitions for rehearing sub nomine as follows:

Certificate of Good Faith

By my signature below, I certify that the grounds asserted in this petition for rehearing are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented and that it is filed in good faith and not even remotely for purposes of delay.

Parties:

Defendant-Appellant-Petitioner

RICHARD JOHN FLORANCE, JR.

Plaintiffs-Appellees-Respondents

STATE OF TEXAS

BRENDA TAYLOR, Collin County Clerk
ROBERT J. DAVIS with
MATTHEWS, et al., LLP

Original Case: No. 07-171, Florance v. Taylor

Decision Date: 1 October 2007 [+25: 26 October]

Extension: 16 October [+15: 31 October]

Intervening events motivating this petition:

A. On 13 August, the *federal* appellate court reinstated the Removal of the related criminal case to the federal trial court. *See* No. 07-40130, State of

Texas v. Florance (5th Cir.).

B. On 31 August, the *state* appellate court entered a ruling in State's appeal of that same related criminal case (No. 05-07-00088-CR, State of Texas v. Florance) ("88") that subtly raises a question as to the decision in the civil case (this case). Key, the opinion in "88" is unpublished, and it refers to the published opinion appealed in No. 07-171, but only once, in a footnote, and by the appellate court's case number.

Substantial grounds not previously presented:

1. No Standing. What's in a name? The case style of the trial and appellate court proceedings comes directly from the statutory proposed form. That case style hides the true party in interest in TAYLOR's theory of the case. By asserting the reality in the style, which was the *de facto* sub nomine that is corrected here, RJF intended to clarify the parties, thus the legal theories, for this proceeding. However, that *de facto* sub nomine case style change may have added more problems than solutions.

Why the case style change originally? As is addressed in some detail in the petition for "88", presently in the printing stage, the party disclosed in "88" but otherwise hidden *here* is State of Texas. But, State has no interest in this case; hence, the *de facto* sub nominee case style change.

So, to back up a step or two to address the case below even more directly, State has no standing; thus, the trial court, no subject matter jurisdiction.

For State to have standing, State must have an "actual grievance". *Tex. Dept. of Parks & Wildlife v. Miranda*, 133 S.W.3d 217 (Tex. 2004). For *State* to have an "actual grievance", *TAYLOR* has to have

acted *within* the scope. In short, this "In re" case style masks State's purporting to be the actual plaintiff asserting a claim or defense on behalf of an officer, employee or agent. Where there's no question that the officer acted within the scope, there's no question that State would have standing. However, and as discussed in the petition for "88", unless State is confessing to be organized crime, State has no standing where the officer committed or assisted a crime. Assisting in criminal Record-tampering is not even remotely *within* the scope. No clerk may tamper with the Record; no elected Clerk may tamper with the Record via agency, i.e., "by remote", i.e., through any employee; and no judge may assign any clerk, elected or employed, the task of criminal Record-tampering. In short, one more fact that is irrebuttably presumed in this ex parte, star chamber process is that the officer acted *within* the scope. Thus, irrebuttably and falsely presumed, not proved, and impossible to prove, is State's standing (to show up on TAYLOR's behalf, at all).

2. Due Process. Speaking of burden shifting, the ex parte procedure effectively supplies the claim. Thus, the "motion" that "starts" the case is a "response". *Cf. Gaar v. Quirk*, 86 F.3d 451 (5th Cir. 1996) (doctor anticipating malpractice claim filed preemptive suit in federal court; even though he was the plaintiff, the reality analysis treated him as the defendant, thus the suit as a Removal; federal defense doesn't support Removal). So, State shows up asserting defenses with the "motion", either to dismiss or for summary judgment. Thus, new here is that State's affirmative defense, whether it sounds in fraud or immunity, is *presumed*, not *proved*. *But see Dixon v.*

United States, __ U.S. __, 126 S. Ct. 2437 (2006). Further, facts in the (supplied) complaint are to be presumed *true* for analysis of a motion to dismiss. *See e.g., Illinois ex rel. Madigan v. Telemarketing Assoc., Inc.*, 538 U.S. 600 (2003) (Part III); *Bell Atlantic, Corp v. Twombly*, __ U.S. __, 127 S. Ct. 1955 (2007). But this ex parte, star chamber procedure irrebuttably presumes the (supplied) claim ***false***. Moreover, inferences are to be presumed *against* the summary judgment movant. *Beard v. Banks*, 542 U.S. 406 (2004) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)); *Scott v. Harris*, __ U.S. __, 127 S. Ct. 1769 (2007) (citing *United States v. Diebold*, 369 U.S. 654, 655 (1962)). But this ex parte, star chamber procedure irrebuttably presumes evidence ***for*** the movant.

3. "No evidence." Also suggested in the petition for "88" is the evidentiary perspective that the "Notice of Lien" document is not even admissible evidence. This directly and all the more adversely affects State's standing, which it never had, anyway, as discussed above. This also directly supports the fact of burden shifting.

Remedies Requested

RJF requests

1. That this Court grant this petition, thus, the writ of certiorari, and take jurisdiction of this matter;
2. That this Court rule TEX. GOV'T CODE §§ 51.901, 51.902, and 51.903 void and unenforceable, for violations of Due Process and/or Separation of Powers;

3. If the statutes are valid and enforceable, that this Court rule that the underlying claim, lien, and Notice of Lien constitute an exclusively federal *in rem* matter, if there is evidence, at all;
4. That this Court vacate the state appellate court's judgment and remand this case to the state district court with instructions to dismiss for lack of jurisdiction;
5. The opportunity to brief any additional issues the Court may identify;
6. The non-argument calendar. Oral argument is not expected to aid in the resolution of these issues;
7. That costs be taxed to TAYLOR; and
8. Any and all other relief at law, in equity or sui generis to which he may show himself justly entitled.

Respectfully submitted and Certified,

/s/ Richard John Florance, Jr.
Richard John Florance, Jr.

Verification

Per 28 U.S.C. § 1746, I, Richard John Florance, Jr., depose and declare (or certify, verify or state), under penalty of perjury, that I am at least 21 years of age, that I am competent to make this Affidavit, that I have personal knowledge of these facts, and that these facts are true and correct.

The facts stated in this Rule 44.2 Petition for Rehearing Sub Nomine are true and correct.

Further, Declarant sayeth not.

Executed on this the _____ of October, 2007

/s/ Richard John Florance, Jr.
Richard John Florance, Jr., Declarant

Certificate of Service

By my signature below, per Rule 29.5(c), I certify, pursuant to 28 U.S.C. § 1746, that as of the _____ day of October, 2007, I have served three (3) true and correct copies of this petition for rehearing by certified mail, return receipt requested, or by 3-day (or faster) delivery service, as follows:

Hon. Greg Abbott
Office of Attorney General
STATE OF TEXAS
300 West 15th Street
Austin, TX 78711-2548

BRENDA TAYLOR
Via counsel of Record below
ROBERT J. DAVIS
MATTHEWS, et al., LLP
8131 LBJ Freeway, Suite 700
Dallas, TX 75251

Given the Statutory Challenges, also served with three (3) copies are the following:

Hon. Paul D. Clement
Solicitor General, U.S.
950 Pennsylvania Ave., N.W.
Washington, DC 20530-0001
(Amicus)

Complimentary service of one (1) copy each is also made as follows:

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(Nos. 05-07-00088-CR,
05-06-00992-CV)

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(No. 4:06-CV-510)

Stacey Kemp, Clerk
County Court at Law No. 2
200 S. McDonald, Suite 120
McKinney, TX 75069
(No. 002-81238-06)

Executed on the _____ day of October, 2007

/s/ Richard John Florance, Jr.
Richard John Florance, Jr.